Shawnee Ready-Mix Concrete & Asphalt Co., Inc. *and* Teamsters Local Union No. 401. Case 04–CA–147344

December 30, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND MCFERRAN

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. A charge was filed by Teamsters Local Union No. 401 (the Union) on March 2, 2015, alleging that the Respondent violated Section 8(a)(5) and (1) of the Act. Subsequently, the Respondent and the Union entered into an informal settlement agreement on June 3, 2015, which was approved by the Regional Director for Region 4 on the same date. The settlement agreement required the Respondent, among other things, to: (1) notify and, upon request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees before implementing any changes in employees' wages, hours, or other terms and conditions of employment; (2) upon request, rescind changes to the terms and conditions of the unit employees that it made by failing to maintain their health insurance; (3) reinstate health insurance for unit employees as required by the parties' contract; (4) make whole unit employees for losses incurred as a result of its failure to maintain a health insurance plan; and (5) post appropriate notices.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of noncompliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. The only issue that the Charged Party may raise before the Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel.

By letter dated August 12, 2015, the Acting Regional Director notified the Respondent that it was not in compliance with the settlement agreement, and advised the Respondent that if it did not comply within 14 days, the Regional Director would issue a complaint that would, among other things, include the allegations covered in the Notice to Employees contained in the settlement agreement.[1] The Respondent has not disputed the facts concerning its noncompliance.

Accordingly, pursuant to the terms of the noncompliance provision in the settlement agreement, the Regional Director issued the complaint on September 4, 2015, and on October 15, 2015, the General Counsel filed a Motion for Default Judgment with the Board. On October 19, 2015, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[1] The Region's August 12, 2015 letter did not further advise the Respondent that continued noncompliance could result in the Region seeking default judgment. However, as stated above, the noncompliance provision of the settlement agreement provided that the Regional Director could take such action 14 days after providing notice of such noncompliance without remedy by the Respondent.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to bargain in good faith with the Union and failing to maintain health insurance benefits for unit employees. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that the Respondent has waived its right to file an answer and that all of the allegations in the complaint are true. Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation with a facility in Plymouth, Pennsylvania (the facility), has been engaged as a concrete and asphalt contractor in the construction industry.

During the year preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at the facility goods valued in excess of $50,000 from enterprises within the Commonwealth of Pennsylvania, which enterprises are directly involved in interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, George Schall has been the Respondent's president, a supervisor within the meaning of Section 2(11) of the Act, and an agent of the Respondent within the meaning of Section 2(13) of the Act.

At all material times, the Respondent and the Union have been parties to a series of collective-bargaining agreements, the most recent of which (the 2013–2015 Agreement) was effective from May 1, 2013, to April 30, 2015. Pursuant to the 2013–2015 Agreement, the Respondent has recognized the Union as the exclusive collective-bargaining representative of its dump truck, concrete, and ready-mix operators (the unit).

At all material times, the unit has been appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act.

At all material times since at least May 1, 2013, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

At all material times, the 2013–2015 Agreement has included, inter alia, the following terms:

Article VI:

> 1. The Company shall select and pay the premiums as stated herein for a Health and Welfare Plan equal to the plan in place as of May 1, 2007, in which some of the deductible may be self-insured by the Company in order to provide a net $250 deductible to the employee. The Company will pay for dental and vision coverage.
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> 2. For all employees on the Company payroll as of April 30, 2001, (names listed on last page), the Company agrees to contribute into the Health and Welfare Plan to completely cover the employee, either as single or family coverage.
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> 3. The Company will pay a maximum of $425.00 per month into the Health and Welfare plan for anyone hired after 05/01/01.
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> 4. If an employee with five (5) or more years of service is off for sickness or accident, the Company shall pay six (6) months premium while employee is off.
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> 5. It is agreed and understood in order to qualify for the Health and Welfare Plan, the employee must work sixty (60) hours or more the previous month.
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> 6. An employee shall not be entitled to Health and Welfare Benefits until after ninety (90) days of employment.
>
> 8. Any employee choosing to opt out of the Health and Welfare plan will receive a monthly stipend as listed.

The subjects set forth above relate to wages, hours, and other terms or conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

Since about October 3, 2014, the Respondent has failed and refused to pay the premiums and to make other contributions to provide the benefits referred to above as required by the 2013–2015 Agreement, thereby causing Blue Cross Blue Shield, the health insurer, to cancel the health insurance benefits and coverage for certain unit employees.

The Respondent engaged in the conduct described above: (a) when the 2013–2015 Agreement was in effect (i.e., until April 30, 2015), without the Union's consent; and (b) after the 2013–2015 Agreement expired on April 30, 2015, without giving the Union notice and an opportunity to bargain with the Respondent concerning its failure and refusal to pay the premiums, to make contributions to the Health and Welfare plan, and to pay stipends to unit employees.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its unit employees in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to pay the Health and Welfare Plan premiums and to make other contributions required to provide the benefits referred to in Article VI of the 2013–2015 Agreement, we shall order the Respondent to restore and maintain the health insurance benefits provided for unit employees in the 2013–2015 Agreement. In addition, we shall order the Respondent to reimburse unit employees for any expenses resulting from its failure and refusal to pay the premiums, make contributions to the Health and Welfare plan, and pay stipends to unit employees as required by the 2013–2015 Agreement, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), plus interest computed as set forth in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).[2]

ORDER

The National Labor Relations Board orders that the Respondent, Shawnee Ready-Mix Concrete & Asphalt Co., Inc., Plymouth, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to pay the Health and Welfare Plan premiums, other contributions, and stipends required to provide the benefits included in Article VI of its May 1, 2013—April 30, 2015 collective-bargaining agreement (2013–2015 Agreement) with Teamsters Local Union No. 401 (the Union) to employees in the following unit:

Dump truck, concrete, and ready-mix operators.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore and maintain the health insurance benefits provided for unit employees in the parties' 2013–2015 Agreement.

(b) Make whole unit employees for any expenses resulting from its failure and refusal, since about October 3, 2014, to pay the premiums, make contributions to the Health and Welfare plan, and pay stipends to unit employees as provided in the 2013–2015 Agreement, with interest, as set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Plymouth, Pennsylvania facility, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and

[2] To the extent that an employee has paid premiums or contributions that have been accepted by the insurer in lieu of the Respondent's delinquent payments during the period of the delinquency, the Respondent will reimburse the employee.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 3, 2014.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 30, 2015

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail or refuse to pay the Health and Welfare Plan premiums, other contributions, and stipends required to provide the benefits included in Article VI of our May 1, 2013–April 30, 2015 collective-bargaining agreement with Teamsters Local Union No. 401 (the Union) to our employees in the following unit:

Dump truck, concrete, and ready-mix operators.

WE WILL NOT in any like or related manner interfere with, coerce, or restrain you in the exercise of the rights listed above.

WE WILL restore and maintain the health insurance benefits provided for you in our May 1, 2013–April 30, 2015 collective-bargaining agreement with the Union.

WE WILL make you whole for any expenses resulting from our failure and refusal since about October 3, 2014, to pay Health and Welfare Plan premiums, make contributions to the Health and Welfare Plan, and pay stipends, as provided in the collective-bargaining agreement, with interest.

SHAWNEE READY-MIX CONCRETE & ASPHALT CO., INC.

The Board's decision can be found at www.nlrb.gov/case/04-CA-147344 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.